



Consumer Electronics Association

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Via Electronic Filing

September 15, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: Notice of ex parte presentation in: CS Docket No. 97-80; MB Docket No. 08-82; and
MB Docket No. 03-15

Dear Ms. Dortch:

On September 14th, 2009, Brian Markwalter, Vice President, Technology and Standards, Consumer Electronics Association (CEA) and the undersigned met with William T. Lake, Chief, Media Bureau and the following members of the Media Bureau: Nancy Murphy; Mary Beth Murphy; Steven Broekaert; Alison Neplokh; Brendan Murray and Jeff Neumann. Among other things, we proposed that the Commission should initiate a rulemaking to assess whether the objectives of section 629 of the Communications Act are being fulfilled or whether further Commission action is warranted.¹ We also discussed CEA's opposition to the Motion Picture Association of America's (MPAA) Petition for Expedited Relief and Petition for Waiver of 47 C.F.R. § 76.1903.² Finally, we urged the Commission to act on our Petition for Clarification and/or Reconsideration of its downloadable V-Chip rule adopted in 2004.³

¹ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80.

² FCC Public Notice, *MPAA FILES PETITION FOR WAIVER OF THE PROHIBITION ON THE USE OF SELECTABLE OUTPUT CONTROLS* (47 C.F.R. § 76.1903), MB Docket No. 08-82 (rel. June 5, 2008).

³ *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Dkt. No. 03-15, Petition for Clarification and/or Reconsideration, Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television (Nov. 3, 2004).

Section 629 of the Communications Act requires the FCC to “adopt regulations to assure the commercial availability” of retail devices used to access video programming and other services delivered over MVPD systems.⁴ In its First Report and Order implementing section 629, the Commission stated: “our commitment to pursue competition means we will carry on an ongoing examination of market developments to determine if we are fulfilling the objectives of the 1996 Act, and Section 629 in particular.”⁵ In its September 2000 Further Notice, the Commission sought comment “regarding market developments to determine if the objectives of Section 629 are being fulfilled or whether further Commission action is warranted.”⁶ Given the significant changes that have occurred in the market since 2000, CEA believes that the time is ripe for a reassessment of whether the Commission’s rules have carried out section 629’s mandate to “assure the commercial availability” of retail devices used to access video programming and other services delivered over MVPD systems. Among other things, CEA urged the Commission to seek comment on whether the common reliance rule⁷ in its current form sufficiently safeguards competition in the retail device market as operators roll out new technology platforms and services. We also urged the Commission to develop specific criteria that a downloadable conditional access system would have to meet before it could be considered as a successor to the CableCARD.

Regarding MPAA’s waiver request, we noted the importance of maintaining consumer expectations regarding the full functioning of their HDTVs. When the Commission adopted its encoding rules, it stated that while it recognized content owners’ interest in protecting their content from mass infringement, it also recognized “consumers expectations that their digital televisions and other equipment will work to their full capabilities.”⁸ If the FCC granted MPAA’s waiver request, 25 million HDTVs would become incapable of receiving and displaying programming accessed via set-top boxes for which a content owner or distributor invokes Selectable Output Control (SOC).⁹ Reducing the total number of HDTVs

⁴ 47 U.S.C. 629(a).

⁵ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Report and Order ¶ 3 (rel. June 24, 1998).

⁶ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Further Notice of Proposed Rule Making and Declaratory Ruling ¶ 3 (rel. Sept. 18, 2000).

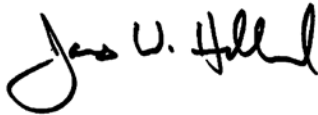
⁷ 47 C.F.R. § 76.1204.

⁸ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order and Second Further Notice of Proposed Rulemaking ¶ 60 (rel. Oct. 9, 2003).

⁹ This figure underestimates the adverse impact on consumers because it does not include those units included in the large number of home theatre systems that were installed using only analog connections. These systems would have to be rewired, often at considerable cost to the consumer, to replace the analog connections with HDMI/HDCP or DVI/HDCP connections. Nor does the 25 million figure take into account the large number of HDTVs with an insufficient number of digital interfaces to support multiple HD devices (e.g., monitor, set-top box, DVR). Consumers who purchased these HDTVs may be forced to buy expensive splitters in order to view SOC-triggered content.

by 20 percent to account for replaced or inactive units still leaves more than 20 million HDTVs that would no longer function as they did when originally purchased by U.S. consumers. Such an outcome would be inconsistent with the Commission's reasoning in adopting the encoding rules as it would frustrate the expectations that millions of consumers have that their HDTVs and other equipment continue to work to their full capabilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James W. Hedlund". The signature is fluid and cursive, with the first name "James" written in a large, stylized loop.

James W. Hedlund
Vice President, Regulatory Affairs

cc: William T. Lake
Nancy Murphy
Mary Beth Murphy
Steven Broekaert
Alison Neplokh
Brendan Murray
Jeff Neuman